

KENNADAY LEAVITT OWENSBY PC

JEFFERY OWENSBY (SBN 105229)

jowensby@kennadayleavitt.com

WARREN F. HODGES (SBN 287162)

whodges@kennadayleavitt.com

KELLEN M. CROWE (SBN 289820)

kcrowe@kennadayleavitt.com

621 Capitol Mall, Suite 2500

Sacramento, California 95814

Telephone: (916) 732-3060

Facsimile: (916) 732-3061

Attorneys for Defendants

AVALON HEALTH CARE, INC.,

BERRYMAN HEALTH, INC.,

AVALON HEALTH CARE MANAGEMENT

OF CALIFORNIA, L.L.C.,

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

LAWRENCE J. WILLIAMSON, on behalf of
himself, and all others similarly situated,

Plaintiff,

vs.

AVALON HEALTH CARE, INC., a Utah
corporation; BERRYMAN HEALTH, INC., a
California corporation; AVALON HEALTH
CARE MANAGEMENT OF CALIFORNIA,
L.L.C., a California limited liability company;
and DOES 1 through 50, inclusive,

Defendants.

Case No.

CLASS ACTION

**DEFENDANTS' NOTICE OF REMOVAL
OF ACTION PURSUANT TO 28 U.S.C §§
1441(a) and 1367(a)**

Complaint Filed: April 4, 2019

Trial Date: Not Set

TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN
DISTRICT OF CALIFORNIA:

PLEASE TAKE NOTICE that Defendants AVALON HEALTH CARE, INC.,
BERRYMAN HEALTH, INC., and AVALON HEALTH CARE MANAGEMENT OF
CALIFORNIA, LLC, (collectively, "Defendants") hereby remove the court action described below
from the Superior Court of the State of California, in and for the County of Alameda, to the United

KENNADAY LEAVITT OWENSBY PC
ATTORNEYS AT LAW
621 CAPITOL MALL, SUITE 2500
SACRAMENTO, CA 95814

1 States District Court for the Northern District of California. The removal is based on 28 U.S.C. §
2 1331.

3 JURISDICTION

4 1. This Court has supplemental jurisdiction over this civil action under 28 U.S.C. §
5 1367 and is one that may be removed to this Court pursuant to the provisions of 15 U.S.C. § 1681 *et*
6 *seq.* This is a civil action seeking remedies founded upon causes of action already pending in this
7 Court in the matter called *Lawrence J. Williamson, on behalf of himself, and all others similarly*
8 *situated, v. Avalon Health Care, Inc., Berryman Health, Inc., and Avalon Health Care Management*
9 *of California, L.L.C., and DOES 1 through 50, inclusive*, case number 4:19-cv-01177-VC (hereafter
10 referred to as “*Williamson I*”). The parties in both cases are identical. The primary rights allegedly
11 violated and upon which Plaintiff and the putative class seek recovery in this action are identical to
12 the primary rights allegedly violated and upon which Plaintiff and the putative class seek recovery
13 in *Williamson I*. By the instant action, Plaintiff seeks remedies in the form of civil penalties
14 pursuant to the California Private Attorneys General Act (“PAGA”) for the violations alleged in
15 *Williamson I*. The PAGA statutes do not create separate rights of action. Accordingly, Plaintiff
16 seeks to establish liability in the District Court and collect penalties in state court. This second case
17 filed by Plaintiff is in fact part of the first case. This Court therefore has jurisdiction over Plaintiff’s
18 PAGA remedies claim under the same supplemental jurisdiction exercised in case no. 4:19-cv-
19 01177-VC.

20 2. On January 29, 2019, Plaintiff filed *Williamson I* in the Superior Court of the State
21 of California, in and for the County of Alameda. True and correct copies of the Summons,
22 Complaint, and Civil Case Cover Sheet are attached as Exhibit A to the Declaration of Warren
23 Hodges filed with this notice.

24 3. On or about February 1, 2019, Plaintiff served *Williamson I* on Defendants Avalon
25 Health Care, Inc. and Avalon Health Care Management of California, L.L.C. On or about February
26 4, 2019, Defendant Berryman Health, Inc. was served with the Complaint.

27 4. Defendants removed *Williamson I* to this Court on March 4, 2019. This Court has
28 original jurisdiction over *Williamson I* under 28 U.S.C. § 1331 and is one that may be removed to

1 this Court pursuant to the provisions of 15 U.S.C. §§ 1681 *et seq.*, in that *Williamson I* is a civil
 2 action founded upon a claim or right arising under the laws of the United States, namely, whether
 3 Defendants violated the provisions of the Fair Credit Reporting Act, 15 U.S.C. § 1681, *et seq.* This
 4 Court has supplemental jurisdiction over those claims pursuant to 28 U.S.C. §§ 1367(a) and §
 5 1441(c). The Court assigned to it case no. 4:19-cv-01177-VC.

6 5. On April 4, 2019, an action was commenced in the Superior Court of the State of
 7 California, in and for the County of Alameda, entitled *Lawrence J. Williamson, on behalf of*
 8 *himself, and all others similarly situated, v. Avalon Health Care, Inc., Berryman Health, Inc., and*
 9 *Avalon Health Care Management of California, L.L.C., and DOES 1 through 50, inclusive,*
 10 designated as Case No. RG19013715 (hereafter referred to as “*Williamson II*”). True and correct
 11 copies of the Summons, Complaint, and Civil Case Cover Sheet are attached as Exhibit B to the
 12 Declaration of Warren Hodges filed with this notice.

13 6. The Complaint in *Williamson II* was personally served on Defendant AVALON
 14 HEALTH CARE MANAGEMENT OF CALIFORNIA, L.L.C., on April 9, 2019. On or about April
 15 11, 2019, Defendant BERRYMAN HEALTH, INC. was served with the Complaint. On or about
 16 April 12, 2019, Defendant AVALON HEALTH CARE, INC. was served with the Complaint.

17 7. This Notice of Removal is timely as it is being filed with this Court and served
 18 within thirty (30) days after the date when Defendants were served with the Summons and
 19 Complaint. 28 U.S.C. § 1446, subd. (b)(1).

20 8. On April 12, 2019, Plaintiff served a Notice of Hearing indicating the State Court
 21 scheduled this matter for both a Complex Determination Hearing on May 7, 2019 and a Case
 22 Management Conference on June 4, 2019. The Complex Determination Hearing has been continued
 23 in the State Court. A true and correct copy of Plaintiff’s Notice of Hearing is attached as Exhibit C
 24 to the Declaration of Warren Hodges filed with this notice.

25 9. Venue is proper in this Court because this is the Court for the district embracing the
 26 place where the action is pending in State Court, and this is the judicial district in which the action
 27 arose. 28 U.S.C. §§ 1391(a), 1441(a), (b).

28 ///

10. All defendants who have been served with a Summons and Complaint have joined in this Notice of Removal, as evidenced by the Joinders of all named defendants, including Defendants AVALON HEALTH CARE, INC., BERRYMAN HEALTH, INC., and AVALON HEALTH CARE MANAGEMENT OF CALIFORNIA, LLC.

11. In accordance with 28 U.S.C. § 1446(d), counsel for Defendants certify that a copy of this Notice of Removal and all supporting papers will be promptly served on Plaintiff's counsel and filed with the Clerk of Alameda County Superior Court. Accordingly, all procedural requirements under 28 U.S.C. § 1446 are satisfied.

WHEREFORE, Defendants pray that the above action now pending against them in the Superior Court of the State of California, County of Alameda, be removed to this Court.

DATED: May 9, 2019

KENNADAY LEAVITT OWENSBY PC

By: /s/ Warren Hodges
 JEFFERY OWENSBY
 WARREN HODGES
 KELLEN M. CROWE
 Attorneys for Defendants
 AVALON HEALTH CARE, INC.,
 BERRYMAN HEALTH, INC.,
 AVALON HEALTH CARE
 MANAGEMENT OF CALIFORNIA, L.L.C.

KENNADAY LEAVITT OWENSBY PC
 ATTORNEYS AT LAW
 621 CAPITOL MALL, SUITE 2500
 SACRAMENTO, CA 95814

PROOF OF SERVICE

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Sacramento, State of California. My business address is 621 Capitol Mall, Suite 2500, Sacramento, CA 95814.

On May 9, 2019, I served true copies of the following document(s) described as **NOTICE OF REMOVAL OF ACTION PURSUANT TO 28 U.S.C §§ 1441(a) and 1367(a)** on the interested parties in this action as follows:

Shaun Setareh, Esq.
 Thomas Segal, Esq.
 SETAREH LAW GROUP
 315 South Beverly Drive, Suite 315
 Beverly Hills, CA 90212
 T: (310) 888-7771
 F: (310) 888-0109
 Email: shaun@setarehlaw.com
 Email: thomas@setarehlaw.com
Attorneys for Plaintiff Lawrence J. Williamson

☐ **BY EMAIL:** I caused such documents to be served via electronic mail transmittal to the offices of the email addresses herein described.

☒ **BY MAIL:** I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed herein and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with Kennaday Leavitt Owensby PC's practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

☐ **BY FEDEX:** I enclosed said document(s) in an envelope or package provided by FedEx and addressed to the persons at the addresses listed above. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of FedEx or delivered such document(s) to a courier or driver authorized by FedEx to receive documents.

☐ **BY PERSONAL SERVICE:** I caused such document(s) to be personally served to the office of the addressee above.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on May 9, 2019, at Sacramento, California.


 SUSAN FINCH